ANG GHEE SENG

v.

MINISTER FOR HOME AFFAIRS, MALAYSIA & ANOR.

SUPREME COURT, KUALA LUMPUR
HASHIM YEOP SANI CJ (MALAYA)
HARUN HASHIM SCJ
LC VOHRAH J
[SC CRIMINAL APPEAL NO. 05-145-90]
24 OCTOBER 1991

CRIMINAL PROCEDURE: *Error in spelling of name of detainee in detention order - Whether rendered detention order defective - Detainee held in police custody while rectification of name carried out - Whether this rendered order unlawful - Amendment to Act - Effect of - Dangerous Drugs (Special Preventive Measures) Act 1985, ss. 6(1), 6A(1)(a)(iii).*

The appellant was detained under a detention order dated 30 April 1990 pursuant to s. 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 (the Act).

The issues were:

(a) whether the error in the spelling of the appellant's name on the detention order affected its validity and

(b) whether the detention in police custody for five days pending the correction of the spelling mistake in the detention order was lawful and whether it was covered by the new s. 6(1)(a)(iii) of the Act.

Held:

[1] The mistake in the spelling of the name was obviously a typing error and in all the documents pertaining to the detention, the I/C number of the appellant was correctly referred to in every one of them. Since the error was clearly typographical, the learned Judicial Commissioner was correct in rejecting the appellant's argument. The validity of the detention order was not affected by the typographical error.

[2] The new s. 6A(1)(a)(iii) makes it clear that no detention order shall be rendered invalid or inoperative by reason that the subject was during the duration of the detention order on journey in police custody (or any other custody) to the place of detention referred to in the detention order.

[3] The intention of the amendment was not to render unlawful the detention where the detainee is detained elsewhere in police custody during the journey to the place of detention. The journey was completed only when the detainee was received by the rehabilitation centre.

[Appeal dismissed.]

[**Bahasa Malaysia** Translation of Headnote]

PROCEDURE JENAYAH: *Kesilapan ejaan nama orang tahanan dalam perintah tahanan - Sama ada membuat perintah salah - Penahanan di balai polis sementara pembetulan ejaan nama dibuat - Sama ada ini membuat perintah tidak sah - Pindaan kepada Akta - Akta Dadah Berbahaya (Langkah-langkah Pencegahan Khas) 1985, ss. 6(1) & 6A(1)(a)(iii).*

Perayu telah ditahan di bawah satu perintah tahanan yang bertarikh 30 April 1990 menurut s. 6(1) Akta Dadah Berbahaya (Langkah-langkah Pencegahan Khas) 1985 (Akta tersebut).

Isu-isu yang dibangkitkan oleh perayu ialah:

(a) sama ada kesilapan dalam ejaan nama perayu didalam perintah tahanan itu menjejas keesahan perintah itu, dan

(b) sama ada tahanan polis selama lima hari sementara menunggu pembetulan ejaan nama itu adalah sah di sisi undang-undang dan sama ada ia diliputi oleh seksyen baru s.6A(1)(a)(iii) Akta tersebut.

Diputuskan:
[1] Adalah jelas bahawa kesilapan dalam ejaan nama itu adalah satu kesilapan "typographical" dan dalam semua dokumen berkaitan dengan tahanan itu, nombor kad pengenalan perayu telah dirujuk dengan betul. Justerunya, Pesuruhjaya Kehakiman yang arif telah mengambil keputusan yang betul dalam menolak hujah perayu dan keesahan perintah tahanan itu tidak terjejas oleh kesilapan menaip itu.

[2] Seksyen baru 6A(1)(a)(iii) yang baru memperuntukkan dengan jelasnya bahawa tiada sebarang perintah tahanan yang boleh dijadikan tidak sah atau tidak berkesan atas alasan bahawa orang tahanan itu, semasa tempoh perintah tahanan, berada dalam perjalanan di bawah tahanan polis (atau sebarang tahanan) ke tempat tahanan yang dirujuk dalam perintah tahanan itu.

[3] Tujuan pindaan itu bukannya untuk menjadikan tidak sah sebarang tahanan di mana orang tahanan ditahan di tempat lain dalam tahanan polis semasa perjalanan ke tempat tahanan. Perjalanan itu hanya berakhir apabila orang tahanan itu diterima di pusat tahanan itu.

[Rayuan ditolak.]

Case referred to:
PP v. Koh Yoke Koon [1988] 1 CLJ (Rep) ***269***

Legislation referred to:
Dangerous Drugs (Special Preventive Measures) Act 1985, ss. 3(2), 6(1), 6A(1)(a)(iii)

For the appellant - Karpal Singh; M/s. Karpal Singh & Co.
For the respondents - Suriyadi bin Halim Omar, SFC

JUDGMENT

Hashim Yeop Sani CJ (Malaya):

The appellant was the subject of a detention order under s. 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 whereby he was ordered to be detained for a period of two years at the Pusat Pemulihan Akhlak, Muar, Johor. The detention order was dated 30 April 1990. The appellant was then taken to the rehabilitation centre but the centre refused to accept him because there was an error in the spelling of his name in the said detention order. Whereupon the appellant was kept at the police station in police custody until 5 May 1990 after which he was sent to and received by the said detention centre. During the period that he was detained in the police station a copy of the detention order was taken from him and was later returned to him with the correction in the spelling of the name which correction was purportedly initialled by the proper authority.

Two main issues were raised by the appellant before the learned Judicial Commissioner and before this Court in support of the contention that his continued detention was unlawful.

The first issue relates to the correction made to the spelling of the name of the appellant in the detention order.

The mistake in the spelling occurs only in respect of the alphabet "C" which should be "G" in that the correct name is "Ang Ghee Seng" and not "Ang Chee Seng". The question was whether the detention order was rendered defective by reason of the spelling error being corrected after the expiry of the 60 days prescribed under s. 3(2) of the Act.

The mistake in the spelling of the name was obviously a typing error and in all the documents pertaining to the detention, the I/C number of the appellant was correctly referred to in every one of them. Since the error was clearly typographical, the learned Judicial Commissioner was correct in rejecting the appellant's argument. The validity of the detention order was not affected by the typographical error.

The second issue is more substantive that is whether the detention in police custody for five days pending the correction of the spelling mistake in the detention order was lawful.

It was argued on behalf of the appellant that the journey was completed when the appellant reached the rehabilitation centre and the continued detention of the appellant other than at the said rehabilitation centre after the completion of the journey would be unlawful and not covered by the new s. 6A(1)(a)(iii) of the Act.

The new provision referred to was the direct result of *PP v. Koh Yoke Koon* [1988] 1 CLJ (Rep) 269 which was an appeal against the order of *habeas corpus* granted by the trial Judge where this Court upheld the ruling of the trial Judge that the period of detention in police custody at the Muar police station was unauthorised.

The new s. 6A(1)(a)(iii) makes it clear that no detention order shall be rendered invalid or inoperative by reason that the subject was during the duration of the detention order on journey in police custody (or any other custody) to the place of detention referred to in the detention order. The intention of the amendment was not to render unlawful the detention where the detainee is detained elsewhere in police custody during the journey to the place of detention. The journey is completed only when the detainee is received by the rehabilitation centre.

Also found at [1991] 3 CLJ 2766